IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

Crl.MC.No. 633 of 2007()

CRL.M.P.118/07 IN CRL.M.C.287/06, 218/06 AND 511/06 OF SESSIONS COURT, TRIVANDRUM

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PETITIONER/ A2

SANTHIBHOOSHAN, AGED 25,
S/O.VENUGOPALAN, VENUVILASOM,
NEAR ATHIYANOOR U.P.SCHOOL, THALAYIL,
ARALAMOODU, ATHIYANOOR VILLAGE.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.RENJITH B.MARAR
SRI.PRABHU VIJAYAKUMAR
SMT.LAKSHMI RENJITH

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.633 of 2007

Dated this the 13th day of March, 2007

ORDER

The petitioner is the accused in a prosecution, inter alia, under Sections 120 B and 307 read with 149 I.P.C. He was granted bail subject to conditions. One of the conditions imposed is that the petitioner should not be involved in any other crime while on bail. The Investigating Officer filed a report informing the learned Sessions Judge that the petitioner has subsequently been involved in some other crimes. The learned Sessions Judge thereupon proceeded to pass the impugned order cancelling the bail that had already been granted to the petitioner by invoking the powers under Section 439(2) Cr.P.C.

2. The learned counsel for the petitioner submits that the learned Sessions Judge erred grossly in not considering pointedly the acceptability of the allegations that the petitioner is involved in some other crimes. Mere registration of the crime by the police is not synonymous with the involvement of the petitioner in some other crimes as to conclude that there has been violation of the conditions of the bond. This was an eminently fit case, where the learned Sessions Judge must have considered the materials available before him and recorded a finding as to whether the condition imposed at the

time of grant of bail has been violated and liberty granted to the accused has been abused by him.

3. A pointed consideration of that question or any finding on that aspect does not appear to have been rendered. I do of course note that the petitioner had not appeared before the learned Sessions Judge and filed any objection to the prayer for cancellation of bail. But even that inadequacy on the part of the petitioner cannot ip so facto result in an order cancelling bail, which is one of the rare and harsh remedies which law appoints against an accused person under Section 439(2) Cr.P.C.

4. I am, in these circumstances, satisfied that the impugned order deserves to be set aside and the learned Sessions Judge has to be directed to consider the matter afresh. I need only mention that the learned Sessions Judge must pointedly consider whether the allegation that the freedom has been abused by the petitioner is factually true and deserves to be accepted. Of course, proof beyond reasonable doubt is not to be insisted at this stage, but the learned Sessions Judge must certainly satisfy himself that the allegations are true.

5. This Crl.M.C is, accordingly allowed. The impugned order is set aside. The parties shall appear before the learned Sessions Judge on 20.03.2007 to continue the proceedings. If the petitioner

wants to urge anything against the petition, he must appear before the learned Sessions Judge on 20/03/2007 without waiting for any further orders.

6. The Registry shall communicate a copy of the order to the learned Sessions Judge and shall also communicate the same over telephone to the Sessions Judge forthwith.

(R.BASANT, JUDGE)

rtr/-